

These are the tentative rulings for civil law and motion matters set for Thursday, February 19, 2015, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, February 18, 2015. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. More information is available at the court's website, www.placer.courts.ca.gov.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER TRILLA E. BAHRKE AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

1. M-CV-0051754 Baughman, Clinton, et al vs. Smith, Glen

Defendant's unopposed Motion to Dismiss Action is granted pursuant to CCP§583.410(a). Further, the clerk is instruction to return to defendant the \$459.07 deposited with the court on August 18, 2011.

2. M-CV-0058072 Diamond Ridge Homeowners Assoc. vs. Myers, Roger, et al.

The Motion for Order Modifying Subpoena is denied.

3. M-CV-0061028 Cota Cole LLP vs. Perrotta, Charles

The demurrer is continued to February 26, 2015 at 8:30 a.m. in Department 43 to be heard by the Honorable Michael W. Jones. The court apologizes to the parties for any inconvenience.

4. M-CV-0061858 Wheels Financial Group, LLC vs. Plank, Terry

Plaintiff's unopposed application for writ of possession is granted pursuant to CCP§512.010.

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5. S-CV-0027248 Davies, A. vs. Martinez, G.

Good cause appearing, the motion for summary judgment is continued to February 26, 2015 at 8:30 a.m. in Department 42 to be heard within 30 days of trial. Plaintiff's request for telephonic appearance is granted for the continued hearing and plaintiff is referred to Local Rule 20.8 for the procedures to set up a telephonic appearance.

6. S-CV-0029734 Hilburn, David, et al vs. Lund, John, et al

The motion for attorney's fees is continued to March 5, 2015 at 8:30 a.m. in Department 42 to be heard by the Honorable Charles D. Wachob.

7. S-CV-0031114 Lashley, Juan, et al vs. U.S. Home Corporation

Cross-Defendant Phil Reome, Inc.'s Motion for Determination of Good Faith Settlement

The unopposed motion is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling tortfeasor's proportionate shares of liability for plaintiffs' injuries and therefore is in good faith within the meaning of CCP§877.6.

Cross-Defendant Alliance Building Products, Inc.'s Motion for Determination of Good Faith Settlement

The unopposed motion is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling tortfeasor's proportionate shares of liability for plaintiffs' injuries and therefore is in good faith within the meaning of CCP§877.6.

8. S-CV-0031959 Spann, William vs. CBM-96, LLC, et al.

The three discovery related motions are continued to February 24, 2015 at 8:30 a.m. in Department 40.

9. S-CV-0032754 Balko, Kathleen, et al vs. Beazer Homes Holdings Corp.

The motion to contest good faith settlement is dropped from the calendar. The moving party filed a notice of withdrawal of the motion on February 3, 2015.

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This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, such argument shall heard in Department 43:

Defendants' Motion for Judgment on the Pleadings

A motion for judgment on the pleadings is akin to a demurrer but brought after the time for filing a demurrer has expired. (*Code of Civil Procedure section 438(f)(2); Ludgate Insurance Co. v. Lockheed Martin Corp. (2000) 82 Cal.App.4th 592, 602.*) It may be brought where the complaint does not state sufficient facts to constitute a cause of action. (*Code of Civil Procedure section 438(c)(1)(B)(ii).*) In making this determination, the court deems all alleged facts to be true and the pleading is given a reasonable interpretation by reading it as a whole so that it is liberally construed with a view toward attaining substantial justice. (*Ludgate Insurance Co. v. Lockheed Martin Corp. (2000) 82 Cal.App.4th 592, 602.*) Defendants' motion is viewed keeping these principles in mind.

Defendants' notice of motion challenges the seventh (negligence); eighth (UCL violations); ninth (equitable accounting); tenth (declaratory relief); eleventh (violations of Civil Code section 2923.7); and twelfth (violations of Civil Code section 2923.6) causes of action. However, the substance of their arguments in the moving papers and reply do not address the tenth cause of action for declaratory relief. The court deems this as an abandonment of any challenge to the tenth cause of action. The court also acknowledges that plaintiff abandons the twelfth cause of action for violations of Civil Code section 2923.5 in his opposition. The remaining causes of action subject to the pending motion are the seventh, eighth, ninth, and eleventh.

Upon review of the eighth and eleventh causes of action, defendants have failed to establish that these claims are insufficiently pled. A review of the FAC shows that these causes of action are sufficient to allege UCL violations and violations to the Civil Code when the pleading is read as a whole. The motion is denied as to these claims.

The same cannot be said for the seventh and ninth causes of action. The seventh cause of action seeks relief against defendants based upon negligence. Plaintiff generally alleges that defendant PNC Mortgage had a duty to act reasonably in processing his loan modification but failed to do so. (FAC ¶¶100-102.) While the negligence action is also alleged against defendant Deutsche Bank, none of the allegations mention this defendant or any of its actions. Presumably, plaintiff implies wrongdoing on the part of Deutsche Bank on a theory of agency. (FAC ¶¶42-48.) These allegations, however, fail to address a fundamental deficiency in plaintiff's pleading. Specifically, a lender is generally only liable for negligence where the lender "actively participates" in the loan process by exceeding its scope "beyond the domain of the usual money lender". (*Nymark v. Heart Federal Savings & Loan (1991) 231 Cal.App.3d 1089, 1096.*) The general allegations of wrongdoing do not describe actions or activities that would take either defendant's role in plaintiff's loan modification outside the scope of a general lending institution. Without such allegations, the eighth cause of action fails.

The ninth cause of action for equitable accounting is also insufficiently pled. Plaintiff alleges that defendants owed him a fiduciary duty of good faith along with open and honest communication. (FAC ¶112.) He also alleges the entire amount of his indebtedness is in dispute. (FAC ¶¶113-114.) These allegations do not support a claim for equitable accounting. Such a cause of action exists where the plaintiff alleges that a balance would be due from defendants to plaintiff. (*St. James Church of Christ Holiness v. Superior Court* (1955) 135 Cal.App.2d 352, 359.) No such allegations are made in the FAC. Moreover, an accounting may only be alleged where the plaintiff makes a written request for an accounting prior to the notice of sale being recorded. (*Civil Code section 2943(c)*.) Plaintiff makes no such allegations.

To reiterate, the motion is denied as to the eighth and eleventh causes of action. The claims against the tenth cause of action are deemed abandoned since defendants failed to substantively argue any deficiencies as to this claim. The motion is granted as to the twelfth cause of action based upon plaintiff's abandonment of the claim. The motion is also granted as to the seventh and ninth causes of action without leave to amend as plaintiff has not sufficiently established an ability to cure the deficiencies found in these causes of action.

11. S-CV-0033914 Bloom, Grecia, et al vs. Watson, Heather L., et al

The unopposed Petition for Minor's Compromise is granted.

12. S-CV-0034010 Beadle, Marva vs. Allied Trustee Services, et al.

The demurrer to the second amended complaint is continued to March 3, 2015 at 8:30 a.m. in Department 32 to be heard by the Honorable Mark S. Curry.

13. S-CV-0034405 Noziska, Joanne, et al vs. Christensen, Todd, M.D., et al

Peter B. Tiemann's unopposed Motion to be Relieved as Counsel for plaintiffs Joanne Noziska and Terry Noziska is granted and he shall be relieved as counsel of record effective upon the filing of the proof of service of the signed order upon the plaintiffs.

14. S-CV-0034500 Andoria LLC vs. Gaube, Donald F., et al

The motion to retain jurisdiction over settlement is continued to March 5, 2015 at 8:30 a.m. in Department 40. The court apologizes to the parties for any inconvenience.

15. S-CV-0034794 Lowe, Lawrence, III vs. Vian Enterprises, Inc., et al

Plaintiff's Motion to Compel Further Responses to Requests for Production of Documents is granted in part. The request is granted as to numbers 38 and 57. Defendant Vain Enterprises shall provide further responses and responsive documents on or before February 27, 2015. The request is denied as to number 59.

16. S-CV-0035562 Maynard, Robert - In Re the Petition of

The unopposed Petition for Minor's Compromise is granted.

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